

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1894

Introduced by Assembly Member Monning

February 16, 2010

An act to amend Section 170.6 of the Code of Civil Procedure, and to amend Section 68616 of the Government Code, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1894, as amended, Monning. Judges: disqualification.

Existing law authorizes a party or attorney in an action or proceeding to move to disqualify a judge, court commissioner, or referee for prejudice against a party or attorney or the interest of a party or attorney, as specified. Prejudice may be established by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial or hearing. Existing law specifies the period during which the motion is required to be made for specified trials and hearings, including, for the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance.

~~This bill would require that the supporting affidavit or declaration under penalty of perjury, or oral statement under oath, state that the party or attorney is exercising his or her rights under these provisions. The bill would extend the time period for making the motion in the trial of a civil cause that has been assigned to a judge for all purposes from the 10-day period described above to a 15-day period. The bill would require a party to a civil action making a motion pursuant to these provisions to serve notice on all parties within 5 days of making the motion. The bill would make other technical and conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 170.6 of the Code of Civil Procedure is
2 amended to read:
3 170.6. (a) (1) A judge, court commissioner, or referee of a
4 superior court of the State of California shall not try a civil or
5 criminal action or special proceeding of any kind or character nor
6 hear any matter therein that involves a contested issue of law or
7 fact when it is established as provided in this section that the judge
8 or court commissioner is prejudiced against a party or attorney or
9 the interest of a party or attorney appearing in the action or
10 proceeding.
11 (2) A party to, or an attorney appearing in, an action or
12 proceeding may establish this prejudice by an oral or written
13 motion without prior notice supported by affidavit or declaration
14 under penalty of perjury, or an oral statement under oath, ~~that the~~
15 ~~party or attorney is exercising his or her rights under this section~~
16 ~~and~~ that the judge, court commissioner, or referee before whom
17 the action or proceeding is pending, or to whom it is assigned, is
18 prejudiced against a party or attorney, or the interest of the party
19 or attorney, so that the party or attorney cannot, or believes that
20 he or she cannot, have a fair and impartial trial or hearing before
21 the judge, court commissioner, or referee. If the judge, other than
22 a judge assigned to the case for all purposes, court commissioner,
23 or referee assigned to, or who is scheduled to try, the cause or hear
24 the matter is known at least 10 days before the date set for trial or
25 hearing, the motion shall be made at least 5 days before that date.
26 If directed to the trial of a cause with a master calendar, the motion

1 shall be made to the judge supervising the master calendar not
2 later than the time the cause is assigned for trial. If directed to the
3 trial of a criminal cause that has been assigned to a judge for all
4 purposes, the motion shall be made to the assigned judge or to the
5 presiding judge by a party within 10 days after notice of the all
6 purpose assignment, or if the party has not yet appeared in the
7 action, then within 10 days after the appearance. If directed to the
8 trial of a civil cause that has been assigned to a judge for all
9 purposes, the motion shall be made to the assigned judge or to the
10 presiding judge by a party within 15 days after notice of the all
11 purpose assignment, or if the party has not yet appeared in the
12 action, then within 15 days after the appearance. If the court in
13 which the action is pending is authorized to have no more than
14 one judge, and the motion claims that the duly elected or appointed
15 judge of that court is prejudiced, the motion shall be made before
16 the expiration of 30 days from the date of the first appearance in
17 the action of the party who is making the motion or whose attorney
18 is making the motion. In no event shall a judge, court
19 commissioner, or referee entertain the motion if it is made after
20 the drawing of the name of the first juror, or if there is no jury,
21 after the making of an opening statement by counsel for plaintiff,
22 or if there is no opening statement by counsel for plaintiff, then
23 after swearing in the first witness or the giving of any evidence or
24 after trial of the cause has otherwise commenced. If the motion is
25 directed to a hearing, other than the trial of a cause, the motion
26 shall be made not later than the commencement of the hearing. In
27 the case of trials or hearings not specifically provided for in this
28 paragraph, the procedure specified herein shall be followed as
29 nearly as possible. The fact that a judge, court commissioner, or
30 referee has presided at, or acted in connection with, a pretrial
31 conference or other hearing, proceeding, or motion prior to trial,
32 and not involving a determination of contested fact issues relating
33 to the merits, shall not preclude the later making of the motion
34 provided for in this paragraph at the time and in the manner herein
35 provided.

36 A motion under this paragraph may be made following reversal
37 on appeal of a trial court's decision, or following reversal on appeal
38 of a trial court's final judgment, if the trial judge in the prior
39 proceeding is assigned to conduct a new trial on the matter.
40 Notwithstanding paragraph (4), the party who filed the appeal that

1 resulted in the reversal of a final judgment of a trial court may
2 make a motion under this section regardless of whether that party
3 or side has previously done so. The motion shall be made within
4 60 days after the party or the party's attorney has been notified of
5 the assignment.

6 (3) A party to a civil action making that motion under this
7 section shall serve notice on all parties within five days of making
8 the motion.

9 (4) If the motion is duly presented, and the affidavit or
10 declaration under penalty of perjury is duly filed or an oral
11 statement under oath is duly made, thereupon and without any
12 further act or proof, the judge supervising the master calendar, if
13 any, shall assign some other judge, court commissioner, or referee
14 to try the cause or hear the matter. In other cases, the trial of the
15 cause or the hearing of the matter shall be assigned or transferred
16 to another judge, court commissioner, or referee of the court in
17 which the trial or matter is pending or, if there is no other judge,
18 court commissioner, or referee of the court in which the trial or
19 matter is pending, the Chair of the Judicial Council shall assign
20 some other judge, court commissioner, or referee to try the cause
21 or hear the matter as promptly as possible. Except as provided in
22 this section, no party or attorney shall be permitted to make more
23 than one such motion in any one action or special proceeding
24 pursuant to this section. In actions or special proceedings where
25 there may be more than one plaintiff or similar party or more than
26 one defendant or similar party appearing in the action or special
27 proceeding, only one motion for each side may be made in any
28 one action or special proceeding.

29 (5) Unless required for the convenience of the court or unless
30 good cause is shown, a continuance of the trial or hearing shall
31 not be granted by reason of the making of a motion under this
32 section. If a continuance is granted, the cause or matter shall be
33 continued from day to day or for other limited periods upon the
34 trial or other calendar and shall be reassigned or transferred for
35 trial or hearing as promptly as possible.

36 (6) Any affidavit filed pursuant to this section shall be in
37 substantially the following form:

38
39 (Here set forth court and cause)
40 State of California,)
 ss. PEREMPTORY CHALLENGE

County of _____

_____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding), ~~is exercising his or her right pursuant to paragraph (2) of subdivision (a) of Section 170.6 of the Code of Civil Procedure, and is requesting that the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) action (or special proceeding) is pending (or to whom it is assigned) may not consider any matter therein that involves a contested issue of law or fact. The moving party understands that by duly presenting an affidavit or declaration under penalty of perjury, or by making an oral statement under oath, without any further act of proof, the judge shall assign another judge to hear the matter.~~ proceeding). That _____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this

_____ day of _____, 20__.

(Clerk or notary public or other
officer administering oath)

(7) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and, to this end, the provisions of this section are declared to be severable.

1 SEC. 2. Section 68616 of the Government Code is amended
2 to read:

3 68616. Delay reduction rules shall not require shorter time
4 periods than as follows:

5 (a) Service of the complaint within 60 days after filing.
6 Exceptions, for longer periods of time, (1) may be granted as
7 authorized by local rule, and (2) shall be granted on a showing that
8 service could not reasonably be achieved within the time required
9 with the exercise of due diligence, consistent with the amount in
10 controversy.

11 (b) Service of responsive pleadings within 30 days after service
12 of the complaint. The parties may stipulate to an additional 15
13 days. Exceptions, for longer periods of time, may be granted as
14 authorized by local rule.

15 (c) Time for service of notice or other paper under Sections
16 1005 and 1013 of the Code of Civil Procedure, and time to plead
17 after service of summons under Section 412.20 of the Code of
18 Civil Procedure, shall not be shortened, except as provided in those
19 sections.

20 (d) Within 30 days of service of the responsive pleadings, the
21 parties may, by stipulation filed with the court, agree to a single
22 continuance not to exceed 30 days.

23 It is the intent of the Legislature that these stipulations not detract
24 from the efforts of the courts to comply with standards of timely
25 disposition. To this extent, the Judicial Council shall develop
26 statistics that distinguish between cases involving, and not
27 involving, these stipulations.

28 (e) A status conference, or similar event, other than a challenge
29 to the jurisdiction of the court, shall not be required to be conducted
30 sooner than 30 days after service of the first responsive pleadings,
31 or 30 days after expiration of a stipulated continuance, if any,
32 pursuant to subdivision (d).

33 (f) Title 4 (commencing with Section 2016.010) of Part 4 of the
34 Code of Civil Procedure shall govern discovery, except in
35 arbitration proceedings.

36 (g) A case shall not be referred to arbitration prior to 210 days
37 after the filing of the complaint, exclusive of the stipulated period
38 provided for in subdivision (d). Any rule adopted pursuant to this
39 article shall not contravene Sections 638 and 639 of the Code of
40 Civil Procedure.

1 (h) Unnamed (DOE) defendants shall not be dismissed or
2 severed prior to the conclusion of the introduction of evidence at
3 trial, except upon stipulation or motion of the parties.

O